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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

162

No. [redacted]

L. P. STEUART, INC., *Petitioner*,

v.

JOSEPH H. MATTHEWS, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on January 16, 1964. Petition for rehearing en banc was denied on March 9, 1964.

OPINIONS BELOW

The District Court's Amended Memorandum and Opinion is unreported but is reprinted at (R 7). The opinion of the Court of Appeals (Appendix A, p. 1a infra) is reported in 329 F. 2d 234 (1964).

JURISDICTION

The Opinion of the Court of Appeals was filed on January 16, 1964. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Should Clause (6), the so-called catch-all clause of Rule 60(b) of the Federal Rules of Civil Procedure be utilized to escape the plain language of Clause (1) of said Rule, providing that an application for relief from a judgment upon a showing of neglect must be made within one year from the date of the entry of judgment.

RULES INVOLVED

Rule 60(b)(1) and (6) of the Federal Rules of Civil Procedure.

Rule 13 of the Local Rules of the United States District Court for the District of Columbia.

STATEMENT OF THE CASE

Respondent, Joseph H. Matthews, filed an action in the United States District Court for the District of Columbia on February 5, 1960 for damages growing out of personal injuries against Petitioner, L. P. Steuart, Inc., and another party, one Thomas Jefferson Pate, claiming that an employee of Petitioner corporation did, on February 7, 1957, operate a car owned by the aforesaid Pate in a negligent manner, thereby causing injury to the Respondent. The plaintiff invoked jurisdiction in the court of first instance upon the ground that the amount in controversy exceeded Three Thousand Dollars ($3,000.00) exclusive of interest and costs. (R. 3). The additional party

defendant in the trial court, Pate, was never served with process, so that the action never went to issue against him. Because of this fact, the Clerk of the United States District Court on October 19, 1960 dismissed the Respondent's cause of action pursuant to Local Rule 13 of the Rules of the United States District Court for the District of Columbia for failure of the Respondent, plaintiff in that court, to take some affirmative action within the six month period provided for in Rule 13. The dismissal was therefore without prejudice for want of prosecution.

On October 22, 1962, over two years after the judgment of dismissal, Respondent, by new counsel, filed a motion to reinstate his cause of action pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. (R 5). In support of said motion, two affidavits were filed, one by the Respondent and a second by the attorney who represented the Respondent originally. (R 5, 6). Each of the affidavits set out facts and circumstances which clearly indicate neglect.

After opposition had been filed thereto by Petitioner, oral argument was had upon said motion to reinstate and it was granted. The District Court's Amended Memorandum and Order filed February 4, 1963 makes it abundantly clear that the trial court felt that plaintiff's original counsel was chargeable with a lack of due diligence but that the court was of the view that the consequences of his counsel's neglect should not be visited upon the Respondent and accordingly ordered reinstatement under Clause (6) of Rule 60 (b). (R 7).

Thereafter an appeal was noted to the United States Court of Appeals for the District of Columbia Circuit

by the Petitioner who urged upon that court that if the District Court found the neglect to be excusable, the provisions of Clause (1), which require that a motion for relief be filed within one year from the judgment of dismissal, barred reinstatement. If, on the other hand, the District Court found the neglect to be inexcusable, then by definition, reinstatement was inappropriate. Petitioner argued that the catch-all provisions of Clause (6) could not apply to a situation of neglect by counsel, whether that neglect was excusable or inexcusable.

The Court of Appeals in a 2-1 opinion affirmed the action of the District Court in granting reinstatement holding that "Clause (1) of Rule 60(b) is not and Clause (6) is broad enough to permit relief when, as in this case, personal problems of counsel caused him grossly to neglect a diligent client's case and mislead the client." In effect, the Court of Appeals held that Clause (6) is sufficiently broad to support reinstatement, even though such a holding clearly does violence to the well settled principle that a client is bound by the acts and omissions of his attorney.

Thereafter a timely motion for rehearing en banc was filed, which motion was denied by an order of the Court of Appeals dated March 9, 1964.

REASONS FOR GRANTING WRIT

1. BY HOLDING THAT THE INEXCUSABLE NEGLIGENCE OF RESPONDENT'S FORMER COUNSEL CONSTITUTED "EXCEPTIONAL CIRCUMSTANCES" NECESSARY TO OBTAIN RELIEF FROM JUDGMENT, THE COURT OF APPEALS RULED CONTRARY TC DECISIONS OF THIS COURT.

The decision of the court below is contrary to the decisions of this court in *Klapprott* v. *United States*, 335 U.S. 601 (1949) and in *Ackermann* v. *United States*, 340 U.S. 193, (1950). In *Klapprott*, *supra*, this Court held that the provisions of Clause (6) of Rule 60(b), only afforded a basis for relief from a judgment in the situation where the moving party could demonstrate to the court "extraordinary circumstances" to explain his failure to appeal and the delay in moving for relief from the judgment. In response to the Government's contention in that case that the petition showed nothing but "excusable neglect" this Court held that if the petition did nothing more than to demonstrate a situation of neglect, then the petitioner could not avail himself of Clause (6) since by the terms of Clause (1) of the Rule, there is a one year limitation upon applications for relief from a judgment based upon excusable neglect.

In *Ackermann*, *supra*, petitioners attempted to bring themselves within Clause (6) to explain their failure to appeal from a denaturalization order and their failure to move for relief from the judgment for over four years after it was entered. This Court in that case ruled that in order for petitioners to avail themselves of Clause (6), they had to demonstrate "exceptional circumstances" to explain their failure to act and that "inexcusable negligence" does not give rise to the exceptional circumstances necessary to bring Clause (6)

into play. In other words, this Court held that Clause (6) had no application to a litigant who was inexcusably negligent.

The Court of Appeals in the instant case found counsel's conduct to be inexcusable when it said in its opinion, "counsel's negligence was not excusable and the court by clear implication so found." (App. A, p. , infra). This decision is accordingly clearly in conflict with the holding of this Court in *Ackermann*.

It would make a shambles of Rule 60(b) if it were to mean, as the Court of Appeals held, that one who was guilty of excusable neglect may only obtain relief from judgment if he makes application therefor within one year from entry; whereas, one who can demonstrate that he or his counsel was guilty of gross or inexcusable neglect is subject to no such limitation.

2. THE RULE OF LAW UPON WHICH THE COURT OF APPEALS RESTS ITS DECISION IS CONTRARY TO THE HOLDING OF THIS COURT IN LINK v. WABASH RAILROAD CO., 370 U. S. 626 (1962).

Petitioner urges that this Writ should issue for it is quite clear that the decision of the Court of Appeals involves a real conflict in the application of a time honored principle of law, one whose implications and effects far outreaches the interest of the individual litigants herein. The holding of the Court of Appeals can only be read as authority for the proposition that a litigant is not bound by the acts or omissions of his attorney. This holding is clearly contrary to the recent decision of this Court in *Link* v. *Wabash Railroad Co.*, *supra*, in which this Court reaffirmed that under our system of law there is no question but that the acts of a litigant's freely chosen attorney are bind-

ing upon the litigant. The results reached in this case therefore touches not only upon the responsibilities of the members of the legal profession, but also upon the rights of our citizens who may some time become involved in litigation. Further, it is patently clear that the consequences of this decision will tend to frustrate rather than to promote the orderly administration of justice in the federal courts. The problem concerning the interpretation of Rule 60(b) is appropriate for review by this Court on certiorari. It is significant for the decision of the Court of Appeals is contrary to decisions of this Court and further the implications of this decision will well affect the efficient administration of justice in the federal courts.

CONCLUSION

The circumstances as disclosed by this record leading to the dismissal of this case, as well as the failure of Respondent to seek reinstatement for over two years constituted neglect. The Court of Appeals, by holding that inexcusable neglect of counsel constituted exceptional circumstances justifying relief under Clause (6) of Rule 60(b) is contrary to the decisions of this Court. Moreover, the rule of law absolving the client from the omissions of his retained counsel is contrary to the holdings in this Court.

For these reasons, Petitioner respectfully asks that this Court grant the writ of certiorari.

Respectfully submitted,

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